UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 99-10236-RWZ

CRAIG CHESTNUT

v.

STEVEN COYLE, *et al.*

MEMORANDUM OF DECISION

March 9, 2004

ZOBEL, D.J.

On May 23, 2000, a jury returned a verdict in favor of plaintiff Craig Chestnut on negligence and 42 U.S.C. § 1983 counts against defendants City of Lowell ("City") and Lowell police officer Stephen Ciavola.[1] Chestnut was awarded $210,000 in compensatory damages against the City and Ciavola, jointly and severally; $40,000 in punitive damages against defendant Ciavola; and $500,000 in punitive damages against the City. On September 20, 2002, the Court of Appeals vacated the award of punitive damages against the City and ordered that "on remand it should be the plaintiff's option whether to have a new trial on actual damages against the City (but not against Ciavola)–a trial in which plaintiff's attorneys' fees will be borne by the City." Chestnut v. City of Lowell, 305 F.3d 18, 21 (1st Cir. 2002) (en banc).

Plaintiff elected to have a new trial on compensatory damages only. Pursuant to this Court's order of January 22, 2003, "[a]ny finding against the City up to $210,000

[1] The jury found no liability as to a third defendant, Lowell police officer Steven Coyle.

[would be deemed] joint and several with Ciavola and [therefore] satisfied by the compensatory damages that plaintiff ha[d] already collected. Any amount awarded in excess of $210,000 [would] be owed by the City alone." After a brief trial, a jury on June 12, 2003, awarded plaintiff $125,000 for pain and suffering and found no lost wages or lost earning capacity.

Plaintiff now files a Motion for Attorneys' Fees in the amount of $70,748.16. The motion seeks fees for three attorneys – lead attorney Daniel S. Sharp, co-counsel Randy M. Hitchcock, and Elaine Whitfield Sharp, who provided services on three days during the week of trial – as well as a paralegal, Owen M. Sullivan.[2] Mr. Sharp's itemized billing statement charges $275 per hour, while Mr. Hitchcock and Ms. Whitfield Sharp charge $200. The requested paralegal rate is $75. Mr. Sharp seeks $37,972 for 138.08 hours of work. Mr. Hitchcock requests $20,700 for 103.5 hours, and Ms. Whitfield Sharp bills $3,915 for 19.2 hours of work as an attorney plus one hour of paralegaling. Mr. Sullivan's invoice totals $2,306.25 for 30.75 hours. Plaintiff's attorneys also seek $5,354.91 for parking, mileage, tolls, photocopying, postage, court reporting and expert witness fees, and service of process. For the first trial held in 2000, involving three defendants instead of one and dealing with liability as well as damages, plaintiff was awarded – and the City of Lowell paid – attorneys' fees totaling $155,904.95, based on rates of $250/hour for Mr. Sharp and $175 for Mr. Hitchcock.

[2] Sullivan is an attorney admitted to practice in the Commonwealth of Pennsylvania and the District of Columbia. He is not admitted in Massachusetts, however, and his services were billed at a paralegal rate.

The City opposes the Motion on numerous grounds. At the outset, the City contends that because the $125,000 jury award was in essence a losing verdict for plaintiff, he should be awarded "no attorney's fees or attorney's fees in a substantially reduced amount." This argument runs contrary to the Court of Appeals' order that "plaintiff's attorneys' fees will be borne by the City." Chestnut, 305 F.3d at 21. The Court of Appeals plainly contemplated that plaintiff might not prevail at a second trial. Plaintiff is entitled to reasonable attorneys' fees even though he did not collect any more damages from the City as a result of the second trial.

The City also makes five arguments attacking the substance of the fee request: (1) plaintiff's counsel failed to show that the requested rates are prevailing in the market; (2) plaintiff's itemized bills failed to distinguish between "core" legal work and "noncore" work that is typically discounted by a third; (3) the billing statements contain numerous items that are not sufficiently precise to allow the Court to assess whether the time spent was reasonable; and (4) plaintiff's attorneys spent an excessive amount of time in client conferences and strategy sessions that would never have been billed to a private client; (5) the requested fees are excessive for a second trial limited solely to damages.

This Court uses the lodestar method to determine a fee award, which requires it to calculate "'the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.'" Gay Officers Action League v. Puerto Rico, 247 F.3d 288, 295 (2001) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). "In implementing this lodestar approach, the judge calculates the time counsel spent on the case, subtracts duplicative, unproductive, or excessive hours, and then applies prevailing rates in the community (taking into account the qualifications, experience, and specialized

competence of the attorneys involved)." Gay Officers Action League, 247 F.3d at 295. Once the lodestar is calculated, the Court may adjust it in accordance with 12 factors enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). See also Coutin v. Young & Rubicam Puerto Rico, Inc., 124 F.3d 331, 337 & n.3 (1st Cir. 1997).[3]

Of the City's five substantive arguments, the first four address the calculation of the lodestar, and the fifth seeks its adjustment. As to the lodestar calculation, I do not believe that the billing statements are insufficiently precise or that an excessive amount of time was spent in client conferences and strategy sessions. The City after all tried a very different and more complete case the second time around. Meriting more attention is the City's contention that prevailing market rates do not support plaintiff's request of $275/hour for Mr. Sharp, $200 for Mr. Hitchcock and Ms. Whitfield Sharp, and $75 for Mr. Sullivan. Plaintiff bears the burden of showing that requested rates match "those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation," Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984). Additionally, "in calculating a reasonable attorney's fees[,] the court may bring to bear its knowledge and experience concerning both the cost of attorneys in its market area and the time demands of the particular case." Nydam v. Lennerton, 948 F.2d 808, 812

[3] The Johnson factors include (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney(s) due to acceptance of the case; (5) the customary fee; (6) the nature of the fee (fixed or contingent); (7) the time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney(s); (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) the size of awards in similar cases.

(1991). The rates requested by plaintiff fall within a range of fees that have been awarded in this jurisdiction. See, e.g., LaPlante v. Pepe, No. 01-10186, 2004 WL 371832, at *4 (D. Mass. Jan. 29, 2004) (approving $300/hour for a partner and $275 for a senior associate, both of whose "inexperience in civil rights matters was more than matched by their overall trial expertise"); Norris v. Murphy, 287 F. Supp. 2d 111, 117-18 (D. Mass. 2003) ($265 for experienced civil rights counsel, $125 for junior associate). Mr. Sharp has been litigating civil rights cases for more than a decade, and Mr. Hitchcock has practiced law for 11 years and worked on civil rights matters for more than six. Given their experience and dedication to this case, it is perfectly reasonable that their hourly rates in 2003 would be $25 per hour higher than what they charged three years earlier. Although Ms. Whitfield Sharp's contribution to the case lasted only three days during the week of trial, she is an attorney who has been practicing law since 1987 and has much experience litigating section 1983 claims. Her requested hourly rate of $200 is also reasonable. Regarding the paralegal fee, this jurisdiction for several years has valued the work of paralegals and law students at $60/hour. See, e.g., Norris, 287 F. Supp. 2d at 118; Martinez v. Hodgson, 265 F. Supp. 2d 135, 146 (D. Mass. 2003); Stanton v. Southern Berkshire Regional School Dist., 28 F. Supp. 2d 37, 42 (D. Mass. 1998). Mr. Sullivan's extensive legal training and experience warrants a higher hourly rate, especially in light of the fact that his contribution to the trial preparation was often substantive. The $75 hourly rate is appropriate here.

The City further argues for a reduction of the lodestar calculation due to the failure of plaintiff's attorneys to distinguish between "core" and "non-core" legal work. Core legal work, for which the attorneys may charge their full hourly rate, includes "legal

research, writing of legal documents, court appearances, negotiations with opposing counsel, monitoring, and implementation fo court orders." Brewster v. Dukakis, 3 F.3d 488, 492 n.4 (1st Cir. 1993). "Non-core" work, which "consists of less demanding tasks, including letter writing and telephone conversations," is often discounted by a third. Id. at 492 & n.4. Travel time may be discounted by an even larger percentage. Maceira v. Pagan, 698 F.2d 38, 40 (1st Cir. 1983) (reduction by half); Horney v. Westfield Gage Co., 227 F. Supp. 2d 209, 216 (D. Mass. 2002) (same); Stanton, 28 F. Supp. 2d at 43 (travel time was billable at $100/hour, where the reasonable attorney rate was $250). Although the Court is not always required to apply differential rates, Maceira, 698 F.2d at 41, it is certainly appropriate to do so here.

Plaintiff's failure to distinguish between core and non-core tasks warrants a significant adjustment of the lodestar figure. Non-core tasks will be reduced by one-third, and travel time will be assessed at $100/hour. Of the 138.08 hours claimed by Mr. Sharp, 15.66 are redesignated non-core,[4] and 21 hours are redesignated as travel time.[5] Of the 103.5 hours claimed by Mr. Hitchcock, 16.3 hours are non-core,[6] and 5

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[4] This calculation includes all of Mr. Sharp's time billed on November 13 and December 16, 2002, as well as on January 25 and 29; February 18 and 28; March 3 and 13; April 28 and 29; and May 1 (minus one hour for travel), 5, 6, 9 (minus one hour for travel), 12, 13, 15, 16, 22 and 23, 2003. Partial redesignations were made for October 7 (.25 for setting up new files in PC) and December 10, 2002 (.25 for faxing, calling the court), as well as for February 10 (.25 for sending letter to client) and 20 (.5 for returning calls and receiving and sending faxes) and June 12, 2003 (.25 for reviewing records for raw time data on fee petition and compiling raw hours).

[5] The travel time calculation is derived from the mileage claimed in plaintiff's invoice of costs. Travel to and from Boston was assessed at one hour for February 20, May 1 and 9, and June 9-12, 2003. Travel to and from Lowell was counted at 1.5 hours for February 14, April 28, May 8, and June 3. Two hours of the November 19, 2002, time entry was redesignated travel time because of the brevity of the scheduling

hours count as travel time.[7] Ms. Whitfield Sharp's billings are properly regarded as core legal work.

Additionally, the Court may strike "duplicative, unproductive, or excessive" time from the lodestar, Gay Officers Action League, 247 F.3d at 295, and certain entries in plaintiff's time sheets are easily categorized as such. First, plaintiff's lead attorney seeks fees for time spent preparing motions for pre-judgment interest and for leave to file a fourth amended complaint. The motion for pre-judgment interest did not concern the retrial, and given the procedural posture of the case three years after the first trial and following a limited remand from the Court of Appeals, the motion to file a fourth amended complaint was entirely unproductive. Therefore, the time spent on those two motions – 3.42 hours on the motion for pre-judgment interest[8] and 7 hours on the motion for leave to file a fourth amended complaint[9] – shall be subtracted from Mr. Sharp's time records. Second, co-counsel and paralegal spent an inordinate and equally useless amount of time tracking down newspaper articles about this case. All of

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conference in this Court, and Mr. Sharp's travel to and from Boston "in bad traffic" on May 28, 2003, was counted at 1.5 hours. The entire time (totaling 4.5 hours) attributable to two wasted trips to Boston on April 17 and 24, 2003, has also been redesignated as travel time.

[6] See Mr. Hitchcock's entries for January 26 and 28 and June 1, 4, 5, and 6, 2003.

[7] This calculation consists of one hour for travel to and from court on each of the following days: February 20 and June 9-12, 2003.

[8] See Mr. Sharp's entries for March 5 and 8, 2003.

[9] See entries for March 4, 8, and 9, 2003.

this time – 4 hours attributable to Mr. Hitchcock[10] and 7.25 hours for Mr. Sullivan[11] – is excluded. Third, Mr. Hitchcock logged 9.7 hours for depositions that Mr. Sharp also attended. This time is unreasonably duplicative and is also subtracted from the number of hours worked. Finally, Ms. Whitfield Sharp's invoice provides a detailed description of 19.2 hours of legal work, but she then adds one hour of paralegal activity to her statement without explanation. Her statement reveals a number of paralegal-type duties performed on June 9 and 10, 2003, alongside her legal work. It appears, therefore, that one hour should be subtracted from the 19.2 hours billed at her attorney rate to account for her paralegal activities.

As a result of the redesignation of non-core and travel time and the subtraction of duplicative, unproductive and excessive time, the lodestar is $51,846.73. Of that sum, the portion attributable to Mr. Sharp is $29,995.95; to Mr. Hitchcock, $16,373.28; to Ms. Whitfield Sharp, $3,715; and to Mr. Sullivan, $1,762.50. The lodestar "represents a presumptively reasonable fee." Lipsett v. Blanco, 975 F.2d 934, 937 (1st Cir. 1992). Although the Court may adjust the figure, the circumstances of this case do not so warrant.

Accordingly, plaintiff's Motion for Attorney's Fees is allowed in part. The Court orders the City of Lowell to pay plaintiff attorneys' fees in the amount of $51,846.73 and costs in the amount of $5,354.91.

DATE

/s/ Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

[10] See Mr. Hitchcock's entry for February 25, 2003.

[11] See Mr. Sullivan's entries for May 7 and 9, 2003.